

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MEMPHIS DIAZ

Plaintiff,

v.

**CITY OF PHILADELPHIA, ERIC IFFRIG,
Individually and in His Professional Capacity
as Recreation Projects Director of Defendant
City of Philadelphia, and RICHARD TUSTIN
Individually and in His Professional Capacity
as Director of the Capital Program Office for
Defendant City of Philadelphia
Defendants.**

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CIVIL ACTION

NO. 07-4598

DuBOIS, J.

July 27, 2009

ORDER

AND NOW, this 27th day of July, 2009, upon consideration of defendants' Motion for Summary Judgment (Document No. 21, filed October 28, 2008), Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment (Document No. 22, filed November 16, 2008); and Reply Brief in Further Support of Defendants' Motion for Summary Judgment (Document No. 23, filed December 1, 2008), for the reasons set forth in the attached Memorandum, Defendants' Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. Defendants' Motion for Summary Judgment with respect to Counts I, II, III, VI, VII, VIII, IX, and X is **GRANTED**;

2. The Court **DEFERS** ruling with respect to Counts III and IV and directs supplemental briefing on those claims in light of Gross v. FBL Financial Services, Inc., ___ U.S. ___, 129 S.Ct. 2343 (2009).

IT IS FURTHER ORDERED that:

1. Defendants shall file and serve their supplemental brief with respect to Counts III and IV on or before August 3, 2009;

2. Plaintiff shall file and serve his response to the supplemental brief with respect to Counts III and IV on or before August 10, 2009.

Two (2) copies of the supplemental brief and the response shall be served on the Court (Chambers, Room 12615) when the originals are filed.

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.